APPENDIX.

THE STATUTES.

Schedule A-3 of the Revenue Act of 1926, as amended, as in effect February 1, 1937, imposes a documentary stamp tax:

> "On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares of certificates mentioned or described in subdivision 2, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not), on each $100 of par or face value or fraction thereof of the certificates of such corporation or other organization (or of the shares where no certificates were issued) 4 cents until July 1, 1937, and 2 cents thereafter, and where such shares or certificates are without par or face value, the tax shall be 4 cents until July 1, 1937, and 2 cents thereafter, on the transfer or sale or agreement to sell on each share (corporate share, or investment trust or other organization share as the case may be): *Provided,* That in case the selling price, if any, is $20 or more per share the above rate shall be 5 cents instead of 4 cents until July 1, 1937: *Provided further,* That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited nor upon the return of stock loaned; *Provided further,* That the tax shall not be imposed

upon deliveries or transfers to a broker or his registered nominee for sale, nor upon deliveries or transfers by a broker or his registered nominee to a customer for whom and upon whose order the broker has purchased same, nor upon deliveries or transfers by a purchasing broker to his registered nominee if the shares or certificates so delivered or transferred are to be held by such nominee for the same purpose as if held by the broker, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That in case of sale where the evidence of transfer is shown only by the books of the corporation or other organization the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock,

share, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both: *Provided further*, That as used in this section the term 'registered nominee' shall mean any person registered with the collector of internal revenue in accordance with such rules and regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury shall prescribe."

Section 85 of the Stock Corporation Law of the State of New York, as in effect February 1, 1937, relating to "Mergers", provides:

"1. Any domestic stock corporation or any foreign stock corporation authorized to do business in this state owning all the stock of any other domestic stock corporation, authorized to engage in business similar or incidental to the business which the possessor corporation is authorized to engage in, and any domestic stock corporation owning all the stock of any foreign stock corporation authorized to do business in this state and authorized to engage in business similar or incidental to the business which the possessor corporation is authorized to engage in, may file in the office of the secretary of state a certificate of such ownership, in its name and under its corporate seal, signed by its president or a vice-president and its secretary or treasurer, and setting forth a copy of the resolution of its board of directors to merge such other corporation, and to assume all of its obligations, and the date of the adoption thereof. However any domestic gas corporation, electric corporation or gas and electric corporation owning at least ninety-five per centum of the outstanding shares of each class of stock of any

other domestic gas corporation, electric corporation or gas and electric corporation engaged in business similar or incidental to the business which the possessor corporation is authorized to engage in, may file in the office of the secretary of state a certificate of such ownership as above set forth, provided, however, that in case the possessor corporation shall not own all the outstanding stock of the other corporation to be merged, the resolution of the board of directors of the possessor corporation shall state the terms and conditions of the merger, including the securities, cash or other consideration to be issued, paid or delivered by the possessor corporation upon surrender of each share of the merged corporation not owned by the possessor corporation, and provided further that prior to the filing of the certificate in the office of the secretary of state, the possessor corporation shall mail to each stockholder of record of the corporation to be merged a copy of such resolution and notice of adoption thereof, and the certificate shall state that the resolution, and notice have been so mailed. Upon the filing of such certificate, all of the estate, property, rights, privileges and franchises of such other corporation, shall vest in and be held and enjoyed by such possessor corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such possessor corporation, and, except as provided in subdivision three of this section, in its name, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The possessor corporation shall not thereby acquire power to engage in any business or to exercise any right, privilege or franchise of a kind which it could not lawfully engage in or exercise under the provisions of the law by or pursuant to which such possessor corporation is organized. For the purpose of this subdivi-

sion the word 'any domestic gas corporation, electric corporation or gas and electric corporation' shall be deemed to mean any corporation defined in section ten of article two of the transportation corporations law, or made subject to the provisions of said article two of said law by section five of article one thereof.

"2. The possessor corporation shall be deemed to have assumed all the liabilities and obligations of the merged corporation and shall be liable in the same manner as if it had itself incurred such liabilities and obligations.

"3. If the possessor is a domestic corporation it may relinquish its corporate name and assume in place thereof the name of the merged corporation by including a provision to that effect in the resolution of merger adopted by the directors and set forth in the certificate of ownership, and upon the filing of such certificate the change of name shall be complete with the same force and effect and subject to the same conditions and consequences as if such change had been accomplished by proceedings under the general corporation law. No corporation shall change its name under this section unless the name assumed contains some word or abbreviation clearly indicating that it is a corporation.

"4. Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

"5. If either the possessor corporation or the corporation sought to be merged is subject to the jurisdiction of the public service commission, such merger shall not become effective unless and until such commission shall approve, and the approval of the merger by such commission shall be endorsed on or annexed to the certificate of merger before filing, and the pub-

lic service commission is directed to make such investigations and/or hold such public hearings as is in its opinion necessary or desirable to enable it to determine if such approval should be granted.

"6. Any omnibus corporation may, with the consent of the public service commission, merge with any railroad corporation, or any railroad corporation may, with the consent of the public service commission, merge with any omnibus corporation, under this subdivision, provided such railroad corporation shall have substituted stages, buses or motor vehicles for cars or trains upon tracks on any portion of its route in accordance with section fifty-a of the public service law. No consent shall be given by the commission to any such merger in accordance with this subdivision unless it shall have been shown, after public hearing, that such merger is in the public interest.

"7. In the event all of the stock of the corporation proposed to be merged by a possessor is not owned by such possessor corporation, any stockholder of the corporation so to be merged may, within twenty days after the filing of the certificate with the secretary of state, object to such merger and demand payment for his stock. Such objection and demand must be in writing and filed with the possessor corporation. Thereupon such stockholder and the possessor corporation shall have the right, subject to the conditions and provisions of section twenty-one, to have such stock appraised and paid for as provided in said section. As amended L. 1924, c. 441, § 15; L. 1925, c. 649; L. 1935, c. 398; L. 1936, c. 778, §§ 1-3; L. 1937, c. 815, eff. June 1, 1937."

Section 86 of the Stock Corporation Law of the State of New York as in effect February 1, 1937, relating to "Consolidations", provides:

"Any two or more stock corporations, organized under the laws of this state for the purpose of carry-

ing on any kind or kinds of business which a corporation organized under article two of this chapter might carry on may be consolidated into a single corporation by the filing of a certificate which shall be entitled and endorsed 'Certificate of consolidation forming ....., pursuant to section eighty-six of the stock corporation law' (the blank space being filled in with the name of the corporation formed by the consolidation) and which shall state:

"1. The name of each corporation to be included in the consolidation, and the date of filing of its certificate of incorporation in the department of state, or, if any such corporation is created by a special law and has no certificate of incorporation, the chapter number and year of passage of such law.

"2. The total number of shares which each of the corporations to be included in the consolidation is authorized to issue, the number thereof which have a par value, if any, together with the par value of each, and the number thereof which are without par value.

"3. The name of the new corporation.

"4. Either the amount of the capital stock of the new corporation and the number and par value of the shares of which it is to consist, or, if the corporation is to issue shares without par value, the statements required by section twelve. If the shares are to be classified, the number of shares to be included in each class and all of the designations, preferences, privileges and voting powers of the shares of each class, and the restrictions or qualifications thereof.

"If any class of stock which is preferred as to dividends or assets is to be issued in series as provided by section eleven, either (a) the designations, preferences, privileges and voting powers of the shares of the first series of such class, and the restrictions or qualifications thereof, and that the board

of directors is authorized to fix from time to time before issuance the designations, preferences, privileges and voting powers of the shares of each subsequent series of such class, and the restrictions or qualifications thereof, or (b) that the board of directors is authorized to fix from time to time before issuance the designations, preferences, privileges and voting powers of the shares of each series of such class, and the restrictions or qualifications thereof.

"5. The city, village or town and the county, within the state, in which the office of the corporation is to be located, and the address within or without the state, to which the secretary of state shall mail a copy of process in any action or proceeding against the corporation which may be served upon him.

"6. Its duration.

"7. The number of its directors, or that the number of directors shall be not less than a stated minimum nor more than a stated maximum. In either case the number of directors shall be not less than three.

"8. The names and postoffice addresses of the persons who are to be its directors until the first annual meeting of its stockholders, and if such address shall be in a city, the street and number or other particular description thereof. The number of the directors so named must be the number stated pursuant to the last preceding subdivision of this section if a definite number be stated, or, if an indefinite number be provided for, not less than the minimum number.

"9. The terms and conditions of the consolidation, if any; the mode of carrying the same into effect, and the manner of distributing the shares of the new corporation among the stockholders of the constituent corporations.

"Such certificate shall be either:

"a. Subscribed and acknowledged, in person or by proxy, by the holders of record of all the outstanding shares of each constituent corporation entitled to vote thereon, and shall have annexed an affidavit by the secretary or an assistant secretary of each corporation that the persons who have executed the certificate, in person or by proxy, include the holders of record of all of the outstanding shares of such corporation entitled to vote thereon; or

"b. Subscribed and acknowledged by the president or a vice-president and the secretary or an assistant secretary of each constituent corporation, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes, cast in person or by proxy, of the holders of record of two-thirds of the outstanding shares of such corporation entitled to vote thereon, and that such votes were cast at a stockholders' meeting held upon notice as prescribed in section forty-five of the stock corporation law to every stockholder of record of the corporation entitled to vote thereon, and the date of such meeting.

"Such certificate shall be filed in the department of state and the secretary of state shall make, certify and transmit a copy thereof to the clerk of the county in which the office of the new corporation is to be located, which copy shall be filed by such clerk. The corporation shall cause a certified copy or a duplicate original of such certificate to be filed in the office of the clerk of each county in which a certificate of incorporation of a constituent corporation is filed and in the office of the clerk or register of each county of this state in which real property of a constituent corporation is situated.

"If such certificate contains a statement in conformity with pargraph (B) of subdivision four of section twelve, the amount of the consideration re-

ceived by the new corporation for the issuance of such of its shares without par value as are distributed in place of previously issued and outstanding shares with par value of the constituent corporations, shall be deemed to be the amount of the par value of such previously issued and outstanding shares, or if the actual value of such shares be less than their par value the consideration may be stated to be their actual value, and the amount of the consideration received by the new corporation for the issuance of such of its shares without par value as are distributed in place of previously issued and outstanding shares without par value of the constituent corporations shall be deemed to be the amount of the capital of the constituent corporations represented by such outstanding shares without par value for which the shares of the new corporation without par value are distributed.

"The aggregate par value of the shares with a par value of the new corporation distributed in place of previously issued and outstanding shares of the constituent corporations shall not exceed the aggregate value of the properties, franchises and rights of such constituent corporations.

"Any excess in the amount of the assets of the new corporation over the amount of its liabilities, including capital, or capital stock as the case may be, at the date of consolidation, may be deemed to be surplus of the new corporation.

"10. That the secretary of state is designated as the agent of the corporation upon whom process in any action or proceding against it may be served."

Section 88 of the Stock Corporation Law of the State of New York as in effect February 1, 1937, which defines the "Powers of Consolidated Corporations", provides:

"Such new corporation in addition to the general powers of corporations shall enjoy the rights, fran-

chises and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties and provisions contained in this chapter, and may prosecute or carry on any kind of business which any of the consolidating corporations was authorized by law to conduct."

Section 89 of the Stock Corporation Law of the State of New York as in effect February 1, 1937, which defines the rights and properties that shall rest in a consolidated corporation, provides:

"Upon the filing of such certificate of consolidation in the office of the secretary of state all the rights, privileges, franchises and interests of each of the constituent corporations, and all the property, real, personal and mixed, and all the debts due on whatever account to either of them, as well as all stock subscriptions and other things in action belonging to either of them, shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property and every other interest shall be as effectually the property of the new corporation as they were of the constituent corporations, and the title to all real estate, taken by deed or otherwise, under the laws of this state, vested in either of such constituent corporations, shall not be deemed to revert or be in any way impaired by reason of the consolidation, but shall be vested in the new corporation."